

# House File 722 - Enrolled

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HOUSE FILE 722

1 3 AN ACT

1 4 PROVIDING FOR THE ESTABLISHMENT OF AN INFORMATION

1 5 PROGRAM FOR DRUG PRESCRIBING AND DISPENSING,

1 6 PROVIDING PENALTIES, AND PROVIDING AN EFFECTIVE

1 7 DATE.

1 9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 11 Section 1. Section 22.7, Code Supplement 2005, is amended

1 12 by adding the following new subsection:

1 13 NEW SUBSECTION. 52. The information contained in the

1 14 information program established in section 124.510A, except to

1 15 the extent that disclosure is authorized pursuant to section

1 16 124.510C.

1 17 Sec. 2. NEW SECTION. 124.510A INFORMATION PROGRAM FOR

1 18 DRUG PRESCRIBING AND DISPENSING.

1 19 Contingent upon the receipt of funds pursuant to section

1 20 124.510G sufficient to carry out the purposes of this

1 21 division, the board, in conjunction with the advisory council

1 22 created in section 124.510E, shall establish and maintain an

1 23 information program for drug prescribing and dispensing. The

1 24 program shall collect from pharmacies dispensing information

1 25 for controlled substances identified pursuant to section

1 26 124.510D, subsection 1, paragraph "g". The information

1 27 collected shall be used by prescribing practitioners and

1 28 pharmacists on a need-to-know basis for purposes of improving

1 29 patient health care by facilitating early identification of

1 30 patients who may be at risk for addiction, or who may be

1 31 using, abusing, or diverting drugs for unlawful or otherwise

1 32 unauthorized purposes at risk to themselves and others, or who

1 33 may be appropriately using controlled substances lawfully

1 34 prescribed for them but unknown to the practitioner. For

1 35 purposes of this division, "prescribing practitioner" means a

2 1 practitioner who has prescribed or is contemplating the

2 2 authorization of a prescription for the patient about whom

2 3 information is requested, and "pharmacist" means a practicing

2 4 pharmacist who is actively engaged in and responsible for the

2 5 pharmaceutical care of the patient about whom information is

2 6 requested. The board shall collect, store, and disseminate

2 7 program information consistent with security criteria

2 8 established by rule, including use of appropriate encryption

2 9 or other industry-recognized security technology. The board

2 10 shall seek any federal waiver necessary to implement the

2 11 provisions of the program.

2 12 Sec. 3. NEW SECTION. 124.510B INFORMATION REPORTING.

2 13 1. Each licensed pharmacy that dispenses controlled

2 14 substances identified pursuant to section 124.510D, subsection

2 15 1, paragraph "g", to patients in the state, and each licensed

2 16 pharmacy located in the state that dispenses such controlled

2 17 substances identified pursuant to section 124.510D, subsection

2 18 1, paragraph "g", to patients inside or outside the state,

2 19 unless specifically excepted in this section or by rule, shall

2 20 submit the following prescription information to the program:

2 21 a. Pharmacy identification.

2 22 b. Patient identification.

2 23 c. Prescriber identification.

2 24 d. The date the prescription was issued by the prescriber.

2 25 e. The date the prescription was dispensed.

2 26 f. An indication of whether the prescription dispensed is

2 27 new or a refill.

2 28 g. Identification of the drug dispensed.

2 29 h. Quantity of the drug dispensed.

2 30 i. The number of days' supply of the drug dispensed.

2 31 j. Serial or prescription number assigned by the pharmacy.

2 32 k. Type of payment for the prescription.

2 33 1. Other information identified by the board and advisory

2 34 council by rule.

2 35 2. Information shall be submitted electronically in a

3 1 secure format specified by the board unless the board has

3 2 granted a waiver and approved an alternate secure format.

3 3 3. Information shall be timely transmitted as designated

3 4 by the board and advisory council by rule, unless the board  
3 5 grants an extension. The board may grant an extension if  
3 6 either of the following occurs:  
3 7 a. The pharmacy suffers a mechanical or electronic  
3 8 failure, or cannot meet the deadline established by the board  
3 9 for other reasons beyond the pharmacy's control.

3 10 b. The board is unable to receive electronic submissions.  
3 11 4. This section shall not apply to a prescriber  
3 12 furnishing, dispensing, supplying, or administering drugs to  
3 13 the prescriber's patient, or to dispensing by a licensed  
3 14 pharmacy for the purposes of inpatient hospital care,  
3 15 inpatient hospice care, or long-term residential facility  
3 16 patient care.

3 17 Sec. 4. NEW SECTION. 124.510C INFORMATION ACCESS.

3 18 1. The board may provide information from the program to  
3 19 the following:

3 20 a. (1) A pharmacist or prescriber who requests the  
3 21 information and certifies in a form specified by the board  
3 22 that it is for the purpose of providing medical or  
3 23 pharmaceutical care to a patient of the pharmacist or  
3 24 prescriber. Neither a pharmacist nor a prescriber may  
3 25 delegate program information access to another individual.

3 26 (2) Notwithstanding subparagraph (1), a prescriber may  
3 27 delegate program information access to another licensed health  
3 28 care professional only in emergency situations where the  
3 29 patient would be placed in greater jeopardy if the prescriber  
3 30 was required to access the information personally.

3 31 b. An individual who requests the individual's own program  
3 32 information in accordance with the procedure established in  
3 33 rules of the board and advisory council adopted under section  
3 34 124.510D.

3 35 c. Pursuant to an order, subpoena, or other means of legal  
4 1 compulsion for access to or release of program information  
4 2 that is issued based upon a determination of probable cause in  
4 3 the course of a specific investigation of a specific  
4 4 individual.

4 5 2. The board shall maintain a record of each person that  
4 6 requests information from the program. Pursuant to rules  
4 7 adopted by the board and advisory council under section  
4 8 124.510D, the board may use the records to document and report  
4 9 statistical information.

4 10 3. Information contained in the program and any  
4 11 information obtained from it, and information contained in the  
4 12 records of requests for information from the program, is  
4 13 privileged and strictly confidential information. Such  
4 14 information is not a public record pursuant to chapter 22, and  
4 15 is not subject to discovery, subpoena, or other means of legal  
4 16 compulsion for release except as provided in this division.  
4 17 Information from the program shall not be released, shared  
4 18 with an agency or institution, or made public except as  
4 19 provided in this division.

4 20 4. Information collected for the program shall be retained  
4 21 in the program for four years from the date of dispensing.  
4 22 The information shall then be destroyed.

4 23 5. A pharmacist or other dispenser making a report to the  
4 24 program reasonably and in good faith pursuant to this division  
4 25 is immune from any liability, civil, criminal, or  
4 26 administrative, which might otherwise be incurred or imposed  
4 27 as a result of the report.

4 28 6. Nothing in this section shall require a pharmacist or  
4 29 prescriber to obtain information about a patient from the  
4 30 program. A pharmacist or prescriber does not have a duty and  
4 31 shall not be held liable in damages to any person in any civil  
4 32 or derivative criminal or administrative action for injury,  
4 33 death, or loss to person or property on the basis that the  
4 34 pharmacist or prescriber did or did not seek or obtain or use  
4 35 information from the program. A pharmacist or prescriber  
5 1 acting reasonably and in good faith is immune from any civil,  
5 2 criminal, or administrative liability that might otherwise be  
5 3 incurred or imposed for requesting or receiving or using  
5 4 information from the program.

5 5 7. The board shall not charge a fee to a pharmacy,  
5 6 pharmacist, or prescriber for the establishment, maintenance,  
5 7 or administration of the program, including costs for forms  
5 8 required to submit information to or access information from  
5 9 the program, except that the board may charge a fee to an  
5 10 individual who requests the individual's own program  
5 11 information. A fee charged pursuant to this subsection shall  
5 12 not exceed the actual cost of providing the requested  
5 13 information and shall be considered a repayment receipt as  
5 14 defined in section 8.2.

5 15 Sec. 5. NEW SECTION. 124.510D RULES AND REPORTING.

5 16 1. The board and advisory council shall jointly adopt  
5 17 rules in accordance with chapter 17A to carry out the purposes  
5 18 of, and to enforce the provisions of, this division. The  
5 19 rules shall include but not be limited to the development of  
5 20 procedures relating to:

5 21 a. Identifying each patient about whom information is  
5 22 entered into the program.

5 23 b. An electronic format for the submission of information  
5 24 from pharmacies.

5 25 c. A waiver to submit information in another format for a  
5 26 pharmacy unable to submit information electronically.

5 27 d. An application by a pharmacy for an extension of time  
5 28 for transmitting information to the program.

5 29 e. The submission by an authorized requestor of a request  
5 30 for information and a procedure for the verification of the  
5 31 identity of the requestor.

5 32 f. Use by the board or advisory council of the program  
5 33 request records required by section 124.510C, subsection 2, to  
5 34 document and report statistical information.

5 35 g. Including all Schedule II controlled substances and  
6 1 those substances in Schedules III and IV that the advisory  
6 2 council and board determine can be addictive or fatal if not  
6 3 taken under the proper care and direction of a prescriber.

6 4 h. Access by a pharmacist or prescriber to information in  
6 5 the program pursuant to a written agreement with the board and  
6 6 advisory council.

6 7 i. The correction or deletion of erroneous information in  
6 8 the program.

6 9 2. Beginning January 1, 2007, and annually by January 1  
6 10 thereafter, the board and advisory council shall present to  
6 11 the general assembly and the governor a report prepared  
6 12 consistent with section 124.510E, subsection 3, paragraph "d",  
6 13 which shall include but not be limited to the following:

6 14 a. The cost to the state of implementing and maintaining  
6 15 the program.

6 16 b. Information from pharmacies, prescribers, the board,  
6 17 the advisory council, and others regarding the benefits or  
6 18 detriments of the program.

6 19 c. Information from pharmacies, prescribers, the board,  
6 20 the advisory council, and others regarding the board's  
6 21 effectiveness in providing information from the program.

6 22 Sec. 6. NEW SECTION. 124.510E ADVISORY COUNCIL  
6 23 ESTABLISHED.

6 24 An advisory council shall be established to provide  
6 25 oversight to the board and the program and to comanage program  
6 26 activities. The board and advisory council shall jointly  
6 27 adopt rules specifying the duties and activities of the  
6 28 advisory council and related matters.

6 29 1. The council shall consist of eight members appointed by  
6 30 the governor. The members shall include three licensed  
6 31 pharmacists, four physicians licensed under chapter 148, 150,  
6 32 or 150A, and one licensed prescriber who is not a physician.  
6 33 The governor shall solicit recommendations for council members  
6 34 from Iowa health professional licensing boards, associations,  
6 35 and societies. The license of each member appointed to and  
7 1 serving on the advisory council shall be current and in good  
7 2 standing with the professional's licensing board.

7 3 2. The council shall advance the goals of the program,  
7 4 which include identification of misuse and diversion of  
7 5 controlled substances identified pursuant to section 124.510D,  
7 6 subsection 1, paragraph "g", and enhancement of the quality of  
7 7 health care delivery in this state.

7 8 3. Duties of the council shall include but not be limited  
7 9 to the following:

7 10 a. Ensuring the confidentiality of the patient,  
7 11 prescriber, and dispensing pharmacist and pharmacy.

7 12 b. Respecting and preserving the integrity of the  
7 13 patient's treatment relationship with the patient's health  
7 14 care providers.

7 15 c. Encouraging and facilitating cooperative efforts among  
7 16 health care practitioners and other interested and  
7 17 knowledgeable persons in developing best practices for  
7 18 prescribing and dispensing controlled substances and in  
7 19 educating health care practitioners and patients regarding  
7 20 controlled substance use and abuse.

7 21 d. Making recommendations regarding the continued benefits  
7 22 of maintaining the program in relationship to cost and other  
7 23 burdens to the patient, prescriber, pharmacist, and the board.  
7 24 The council's recommendations shall be included in reports  
7 25 required by section 124.510D, subsection 2.

7 26 e. One physician and one pharmacist member of the council  
7 27 shall include in their duties the responsibility for  
7 28 monitoring and ensuring that patient confidentiality, best  
7 29 interests, and civil liberties are at all times protected and  
7 30 preserved during the existence of the program.

7 31 4. Members of the advisory council shall be eligible to  
7 32 request and receive actual expenses for their duties as  
7 33 members of the advisory council, subject to reimbursement  
7 34 limits imposed by the department of administrative services,  
7 35 and shall also be eligible to receive a per diem compensation  
8 1 as provided in section 7E.6, subsection 1.

8 2 Sec. 7. NEW SECTION. 124.510F EDUCATION AND TREATMENT.

8 3 The program for drug prescribing and dispensing shall  
8 4 include education initiatives and outreach to consumers,  
8 5 prescribers, and pharmacists, and shall also include  
8 6 assistance for identifying substance abuse treatment programs  
8 7 and providers. The board and advisory council shall adopt  
8 8 rules, as provided under section 124.510D, to implement this  
8 9 section.

8 10 Sec. 8. NEW SECTION. 124.510G DRUG INFORMATION PROGRAM  
8 11 FUND.

8 12 The drug information program fund is established to be used  
8 13 by the board to fund or assist in funding the program. The  
8 14 board may make deposits into the fund from any source, public  
8 15 or private, including grants or contributions of money or  
8 16 other items of value, which it determines necessary to carry  
8 17 out the purposes of this division. Moneys received by the  
8 18 board to establish and maintain the program must be used for  
8 19 the expenses of administering this division. Notwithstanding  
8 20 section 8.33, amounts contained in the fund that remain  
8 21 unencumbered or unobligated at the close of the fiscal year  
8 22 shall not revert but shall remain available for expenditure  
8 23 for the purposes designated in future years.

8 24 Sec. 9. NEW SECTION. 124.510H PROHIBITED ACTS ==  
8 25 PENALTIES.

8 26 1. FAILURE TO COMPLY WITH REQUIREMENTS. A pharmacist,  
8 27 pharmacy, or prescriber who knowingly fails to comply with the  
8 28 confidentiality requirements of this division or who delegates  
8 29 program information access to another individual is subject to  
8 30 disciplinary action by the appropriate professional licensing  
8 31 board. A pharmacist or pharmacy that knowingly fails to  
8 32 comply with other requirements of this division is subject to  
8 33 disciplinary action by the board. Each licensing board may  
8 34 adopt rules in accordance with chapter 17A to implement the  
8 35 provisions of this section.

9 1 2. UNLAWFUL ACCESS, DISCLOSURE, OR USE OF INFORMATION. A  
9 2 person who intentionally or knowingly accesses, uses, or  
9 3 discloses program information in violation of this division,  
9 4 unless otherwise authorized by law, is guilty of a class "D"  
9 5 felony. This section shall not preclude a pharmacist or  
9 6 prescriber who requests and receives information from the  
9 7 program consistent with the requirements of this chapter from  
9 8 otherwise lawfully providing that information to any other  
9 9 person for medical or pharmaceutical care purposes.

9 10 Sec. 10. Sections 124.510A through 124.510H are repealed  
9 11 June 30, 2009.

9 12 Sec. 11. EFFECTIVE DATE. This Act, being deemed of  
9 13 immediate importance, takes effect upon enactment.

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9 18 CHRISTOPHER C. RANTS  
9 19 Speaker of the House

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9 21 \_\_\_\_\_  
9 22 JEFFREY M. LAMBERTI  
9 23 President of the Senate  
9 24

9 25 I hereby certify that this bill originated in the House and  
9 26 is known as House File 722, Eighty-first General Assembly.

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9 30 \_\_\_\_\_  
9 31 MARGARET THOMSON  
9 32 Chief Clerk of the House

9 32 Approved \_\_\_\_\_, 2006

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10 1 \_\_\_\_\_  
10 1 THOMAS J. VILSACK

